SUPREME COURT, U. S.

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No. 74-1030

In the Supreme Court of the United States

OCTOBER TERM, 1974

WARREN B. WILSON,

Petitioner,

v.

BOARD OF BAR EXAMINERS, OREGON STATE BAR,

Respondent.

BRIEF OF BOARD OF BAR EXAMINERS, OREGON STATE BAR, IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

On Petition for a Writ of Certiorari to the Supreme Court of the State of Oregon

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JURISDICTION

The respondent, Board of Bar Examiners, Oregon Bar, opposes the petition for a writ of certiorari on the ground that this Court lacks jurisdiction to review the order of the Supreme Court of the State of Oregon denying petitioner's application for admission to practice law.

Even assuming that the Oregon Supreme Court's order is a "final judgment or decree" under 28 U.S.C. § 1257, the record before this Court is perfectly clear that the federal constitutional questions argued in the petition are raised for the first time in this Court.

The controlling statute, 28 U.S.C. § 1257(3) limits this Court's power to review judgments of state courts to cases where in lower court proceedings a title, right, privilege or immunity has been specially "... set up or claimed" ... under the Constitution. treaties, or federal statutes.

The petition does not even suggest that any federal constitutional right or privilege was raised or decided by the Oregon Supreme Court. The so-called "Mandate" of the Oregon court (Appendix A) is silent on the subject.

Accordingly, this case falls under the general rule of *Tacon* v. *Arizona*, 410 U.S. 351 (1973) and *Cardinale* v. *Louisiana*, 394 U.S. 437 (1969) that, in state court cases, federal questions raised for the first time in this Court are beyond this Court's jurisdiction.

ARGUMENT

The record before this Court also shows that the petition is frivolous and without merit.

Petitioner is an experienced attorney who has been a member of the California bar for twenty-two years. After he took the Oregon attorney's examination in July 1974, the Board of Bar Examiners conducted an

investigation of his conduct, because as petitioner states (Pet. p. 4): "On two separate occasions involving a total of not more than three minutes, petitioner was observed to be writing on his answer sheet after time had been called." In the course of this investigation, Mr. Wilson submitted his own affidavit concerning his violation of the rules (Appendix C).

On August 26, 1974 the Board voted unanimously to disqualify petitioner's examination ". . . because Mr. Wilson was observed to be, and has admitted, violating the rules of the examination." As a consequence, the Board was ". . . unable to make recommendations as to Mr Wilson's learning and ability," and the Board made no investigation or determination as to Mr. Wilson's character and fitness (Appendix C).

The Board sent to the Oregon Supreme Court a copy of petitioner's file containing the available evidence, including petitioner's own affidavit.

Thereafter, the Oregon Supreme Court requested that petitioner "show cause" why the recommendation of the Board of Bar Examiners should not be approved by the Court. Petitioner's attorney then did respond to the Court's request (Pet. p. 6).

On November 19, 1974, the Oregon Supreme Court decided to accept the recommendation of the Board of Bar Examiners, and denied petitioner's application to practice law "because of his conduct in the taking of the bar examination." (Appendix A).

Thus, the record before this Court affirmatively

shows that on two separate occasions, petitioner was observed writing on his answer sheet after time had been called. A total time of three minutes was involved. After investigation and review of the facts by both the Board of Bar Examiners and the Oregon Supreme Court, where petitioner was allowed an additional submission on an order to show cause, the Court decided to accept the Board's recommendation that petitioner's examination be disqualified.

Certainly, the Board of Bar Examiners and the Oregon Supreme Court were entitled to conclude that since petitioner had three minutes more than other applicants to answer examination questions, his examination paper should be disqualified because the conditions of his examination were not equal to the conditions imposed on other applicants.

CONCLUSION

The petition for a writ of certiorari should be denied for want of any properly presented federal question, and because the petitioner's contentions are without merit.

Respectfully submitted,

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